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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/900,808	07/06/2001	Franky Lee Shacklee	004578.1132	8614

7590 01/22/2003

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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT PAPER NUMBER

3727

DATE MAILED: 01/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/900,808

Applicant(s)

SHACKLEE, FRANKY LEE

Examiner

Stephen J. Castellano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24-37 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 24-37 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

In view of the appeal brief filed on October 29, 2002, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 24, 30-37 are rejected under 35 U.S.C. 102(b) as being anticipated by Fischer et al. (Fischer).

Fischer discloses a container comprising a storage vessel (tube 2a) with an interior compartment and an access opening at one end which is removably closed by a removable end cap (hinged lid 6), a first flange (the outwardly curled end edge of tube 2 as best shown in Fig. 3 and 5) and a generally rectangular first stacking lug (collar 8 including a plate proximal and parallel to the access opening, a plate distal and parallel to the access opening and stacking surfaces 3 and 4), collectively the proximal plate, distal plate and stacking surfaces of the first

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stacking lug provides a generally cylindrical, tubular interior diameter which operates to receive the storage vessel. The first flange is sized to cooperate with a second flange (that portion of lid 6 which is most closely adjacent to outwardly curled end edge of the storage vessel which is best shown in Fig. 5 as the U-shaped channel holding ring seal 25).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer in view of Rocher.

Fischer discloses the invention except for the backing rings which contact the first and second flanges. Rocher teaches backing ring (19) which backs the first flange ⁽¹²⁾ on the storage vessel (11) and also the second flange ⁽²²⁾ on the end cap (16). It would have been obvious to add the backing ring in order to make the sealed closure joint more secure to prevent inadvertent or unauthorized opening of the pressure vessel.

Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer in view of Seitz.

Fischer discloses the invention except for the backing ring which contacts the first flanges. Seitz teaches backing ring (14) which backs the first flange (18 and 16) on the storage vessel. Seitz also teaches a backing ring as parts (14 and 16) or 16 by itself which backs the first flange 18 on the storage vessel. It would have been obvious to add the backing ring in order to reinforce the sealed closure joint.

Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer in view of LaBianca et al. (LaBianca).

Fischer discloses the invention except for the material of the stacking lug and storage vessel is not specified. LaBianca teaches stacking lug and pressure vessel materials made of high density polyethylene (see col. 10, lines 1-4). It would have been obvious to make the stacking lug and pressure vessel of Fischer from high density polyethylene in order to easily form the lug or storage vessel in a single forming operation.

Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer in view of LaBianca and Snyder et al. ('733)(Snyder).

Fischer discloses the invention except for the material of the stacking lug is not specified. LaBianca teaches stacking lug materials made of high density polyethylene (see col. 10, lines 1-4). It would have been obvious to make the stacking lug of Fischer from high density polyethylene in order to easily form the lug or storage vessel in a single forming operation. Snyder teaches a support for a vessel made from rotationally molded cross-linked high density polyethylene. It would have been further obvious to make the stacking lug from rotationally molded cross-linked high density polyethylene in order to provide weatherability, impact resistance and stress cracking resistance.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground

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provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 24-37 are provisionally rejected under the judicially created doctrine of double patenting over claims 25-32 of copending Application No. 09/900,209. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: A container comprising a storage vessel, a removable end cap, a first flange and a first stacking lug.


Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 703-308-1035. The examiner can normally be reached on M-Th 6:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.


Stephen J. Castellano
Primary Examiner
Art Unit 3727

sjc
January 16, 2003